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**LEAD-BASED PAINT ASSESSMENT AND ABATEMENT IN CHILDCARE CENTERS
AND STAFF QUARTERS OWNED BY VHA**

1. PURPOSE: This Veterans Health Administration (VHA) Directive establishes policy for the Lead-Based Paint (LBP) assessment program to reduce the likelihood that occupants of VHA-owned housing (i.e., quarters) and childcare centers located at VHA facilities will be exposed to excessive levels of lead from LBP. ***NOTE:** Environmental Protection Agency (EPA) regulations require the disclosure of the presence of LBP in childcare centers and certain types of housing offered for lease or purchase.*

2. BACKGROUND

a. This LBP Program ensures compliance by VHA facilities with EPA and the Department of Housing and Urban Development (HUD) regulations; this reduces the liability that could result from tort claims related to lead poisoning.

b. Under the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Public Law 102-550), EPA and HUD promulgated joint regulations for disclosure of any known LBP or known LBP hazards in target housing offered for sale or lease. Target housing is defined by statute and regulation to be any housing constructed prior to 1978, except zero-bedroom dwellings, or housing for the elderly or persons with disabilities (unless a child who is less than 6 years of age resides or is expected to reside in the dwelling). Section 408 of the Act waives any immunity otherwise applicable to the United States, including Federal agencies, with regard to substantive or procedural requirements, including the assessment of a penalty or fine.

c. Public Law 102-550 specifically requires that:

- (1) Sellers and lessors provide purchasers with a lead hazard information pamphlet;
- (2) Sellers and lessors disclose the presence of LBP and LBP hazards in target housing and provide purchasers and lessees with any lead hazard evaluation report that is available;
- (3) Sellers permit purchasers a 10-day opportunity to conduct a risk assessment or inspection for the presence of LBP hazards; and
- (4) Sales contracts include a lead warning statement and acknowledgement signed by the purchaser.

d. Regulations developed to implement the requirements of the Residential Lead-Based Paint Hazard Reduction Act of 1992 are contained in HUD regulation Title 24 Code of Federal Regulations (CFR) Part 35 and EPA regulation 40 CFR Part 745. These regulations address requirements related to LBP in housing and in child-occupied facilities, such as childcare

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centers. The Occupational Safety and Health Administration (OSHA) also has standards applicable to the management and abatement of lead that can be found in 29 CFR Parts 1926.62 and 1910.1025. Links to statutes, standards and other material on LBP can be found on the vasafety web page at <http://www.va.gov/vasafety/OSH-issues/OtherOSHIssues/MainPageOtherOSH.htm> and <http://www.epa.gov/opptintr/lead>.

e. **Definitions**

(1) **LBP Hazard.** A LBP hazard is defined as any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil and lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the appropriate Federal agency (see Att. A, par. 2).

(2) **Quarters and Childcare Centers.** Quarters and childcare centers include structures, as well as the real property, on which the structures are located. Real property associated with a childcare center includes outside playground areas used by children while they are at the childcare center.

3. POLICY: It is VHA policy to protect occupants of childcare centers and quarters from the hazards associated with LBP.

4. ACTION

a. **Under Secretary for Health (10).** The Under Secretary for Health (10) must ensure that appropriate policy on lead safety is issued VHA-wide.

b. **Chief Facilities Management Officer (18).** The Chief Facilities Management Officer (18) adopts industry-based specifications and develops and updates, as necessary, construction specifications related to the management of LBP. ***NOTE: Specifications are to address LBP inspection, risk assessment, hazard abatement, and LBP removal that may be necessary during construction projects.***

c. **Director, Occupational Health Program (136).** The Director, Occupational Health Program (136) advises VHA staff on public health issues related to LBP.

d. **Director, Safety and Technical Services (10NB).** The Director, Safety and Technical Services (10NB), provides administrative program management and technical support to Veterans Integrated Service Networks (VISNs) and VHA facilities in complying with Federal, state, and local regulations and VHA policy regarding LBP.

e. **Network Directors.** Network Directors are responsible for ensuring that:

(1) Occupants of childcare centers and quarters located on VHA property are protected from hazards of LBP.

(2) Resources needed to implement the requirements of this directive are provided. Resources are to cover implementation of strategies and oversight for the occupant disclosure process, baseline and periodic LBP inspections and risk assessments, and, where appropriate, LBP abatement.

(3) Construction project designs and specifications are reviewed to ensure that they comply with applicable Federal, state and local health regulations related to LBP. This review is to be done by VISN industrial hygiene and/or safety staff or by contract with an industrial hygiene or engineering firm qualified to perform work related to LBP health and safety issues.

(4) Contracts for leasing or transfer of VHA property are reviewed by VISN industrial hygiene and/or safety staff, or by contract with a qualified industrial hygiene or engineering firm. **NOTE:** *This review is to make certain that contracts for leasing or transfer comply with applicable Federal, state and local environmental and/or public health regulations dealing with assessment, abatement and management of LBP. In addition, it ensures disclosure of the presence of LBP is made to occupants of VHA quarters and childcare facilities.*

(5) Ensure that VHA facility employees responsible for addressing LBP issues are trained and licensed and/or certified as required by OSHA, EPA, and State regulations related to LBP management.

f. **VHA Facility Directors.** VHA facility Directors must:

(1) Ensure that occupants of childcare centers and quarters are protected from LBP hazards by:

(a) Notifying occupants of the presence of LBP as outlined in this directive and/or as required by state or local regulations, and

(b) Conducting EPA-certified inspections, risk assessments, and hazard abatement activities.

(2) Conducting LBP inspections and assessments using EPA-certified inspectors and/or risk assessors and EPA-approved methods.

(3) Abating hazards associated with LBP and disclosing available information regarding the presence of LBP during rental transactions or property transfers involving VHA quarters built prior to 1978.

(4) Developing and monitoring corrective action plans when LBP assessments determine that LBP hazards exist that would pose a health risk to occupants of quarters and childcare centers.

(5) Ensuring construction contractors, childcare center staff, parties to leases, and property transfer contracts are notified of LBP hazards, as required by EPA.

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(6) Encouraging non-VHA employees residing in quarters or working in childcare centers to inform responsible VHA facility managers of deteriorated LBP or LBP that might pose a health hazard.

(7) Ensuring that stop-work authority is delegated to VHA facility safety, health, environmental, and fire protection staff.

(8) Ensuring that VHA facility employees responsible for addressing LBP issues are trained and licensed and/or certified as required by OSHA, EPA, and State regulations related to LBP management.

g. **VHA Facility Safety, Health, Environmental, and Fire Protection Staff.** VHA facility safety, health, environmental, and fire protection staff must:

(1) Develop local policies for: compliance with LBP environmental and occupational safety and health standards, procedures outlined in this directive, and as may be required by Federal, state, or local regulations.

(2) Assist VISN industrial hygiene and/or safety staff in the review of construction project designs and specifications to ensure compliance with applicable Federal, state, and local environmental and health regulations.

(3) Assist EPA-certified inspectors and/or risk assessors with LBP assessment, abatement, and management activities to ensure that information developed meets the needs of the VHA facility.

(4) Assist in the review of contracts for the lease or transfer of VHA property to ensure compliance with applicable Federal, state, and local environmental and/or public health regulations, including those that might require LBP disclosure to occupants.

(5) Inspect and monitor LBP inspections, risk assessments, abatement operations, and maintenance and housekeeping activities to ensure compliance with VHA policy, EPA regulations (40 CFR Part 745.226-227), HUD regulations (24 CFR 35.92), OSHA regulations (29 CFR Parts 1926.62 and 1910.1025) and state and local regulations.

(6) Exercise stop-work authority when activities threaten to release hazardous levels of lead or when prohibited activities are encountered. Consult with contracting officer and/or contracting officer technical representative regarding follow-up actions with contractors.

(7) Provide VHA employees who reside in quarters and persons working in childcare centers with information to assist them in recognizing deteriorated LBP or LBP that might otherwise pose a hazard.

h. **VHA Employees.** VHA employees who reside in staff quarters or work in childcare centers are responsible for informing responsible VHA facility managers of deteriorated LBP or LBP that otherwise might pose a health hazard.

5. REFERENCES

- a. Title 40 Code of Federal Regulations (Protection of Environment), Part 745, Lead-Based Paint Poisoning Prevention in Certain Residential Structures.
- b. Title 24 Code of Federal Regulations (Housing and Urban Development), Part 35.92.
- c. Title 29 Code of Federal Regulations (Occupational Safety and Health), Part 1926.62, and Part 1910.1025.
- d. Public Law 102-550 entitled Residential Lead-Based Paint Hazard Reduction Act of 1992.
- e. Toxic Substances Control Act (TSCA), Title IV, Lead Based Paint Exposure Reduction Act.

6. FOLLOW-UP RESPONSIBILITY: The Assistant Deputy Under Secretary for Health (10N) is responsible for VHA programs related to this Directive. The point of contact for technical and program issues related to this directive is the Director, Safety and Technical Services at (202) 273-5844.

7. RESCISSION: This VHA Directive expires February 28, 2007.

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Acting Under Secretary for Health

Attachment

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ATTACHMENT A

FACILITY ACTIONS REGARDING LEAD-BASED PAINT (LBP)

1. Lead-based Paint (LBP) Inspections and Risk Assessments

a. Veterans Health Administration (VHA) facilities must complete LBP inspections and risk assessments using Environmental Protection Agency (EPA)-certified inspectors and/or risk assessors and EPA-approved methods by the dates shown in the following table for occupied residential quarters buildings and childcare centers built before 1978. Inspections and risk assessments previously conducted by an EPA-certified risk assessor are valid. Inspectors and/or risk assessors must also meet any applicable state certification or licensing requirements related to LBP.

b. Table

| Occupancy Type | Inspections and risk assessments to be completed by: |
|--|---|
| Childcare centers operated on VHA property | September 30, 2002 |
| Housing leased by staff on VHA property (staff quarters) | November 29, 2002 |

2. LBP Hazard Abatement

a. If the risk assessment conducted by EPA-certified risk assessor recommends that hazardous conditions be corrected, VHA facilities must develop an action plan to effect correction of such hazardous conditions. Hazard abatement actions include the removal of paint and dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of painted surfaces or fixtures, or the removal or permanent covering of soil, when LBP hazards are present in such paint, dust or soil. For any recommendations made by the EPA-certified risk assessor that VHA facilities do not plan to implement, VHA facilities are to detail reasons for not implementing the recommendation in their action plans. Action plans that present information on why facilities do not plan to implement recommendations made by EPA-certified risk assessors must be reviewed and approved by the Veterans Integrated Service Network (VISN) industrial hygiene and/or safety staff prior to the initiation of the action plan.

b. Vacant or unoccupied quarters housing are not to be re-occupied until hazardous conditions are abated and applicable Federal and state requirements met. For occupied quarters housing, action plans must address how hazardous conditions (e.g., flaking LBP, LBP dust) that might pose an imminent threat to health, if any, will be corrected. Hazardous conditions posing an imminent threat to health must be corrected immediately, with full abatement of hazardous

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conditions following as soon as is feasible, in accordance with the provisions of the action plan.

c. Construction and renovation work must be planned and carried out in such a way that quarters residents and childcare center occupants are not exposed to levels of lead defined to be hazardous by applicable Federal, state, or local requirements. This may require relocating residents and occupants out of the space during abatement activities.

d. Abatement work must be conducted by EPA-certified firms and EPA-certified persons (Title 40 Code of Federal regulations (CFR) 745.226) using EPA-approved work practices (40 CFR 745.227). A written occupant protection plan is to be developed in accordance with EPA requirements by the EPA-certified supervisor or EPA-certified project designer. This plan must be reviewed and approved by the VHA facility industrial hygiene or safety staff. If appropriate, the firm conducting abatement work must be certified by the state.

e. EPA's post-abatement clearance levels (40 CFR 745.227) must be achieved prior to re-occupancy.

f. Prior to construction or renovation work that may disturb LBP, occupants of childcare centers and quarters are to be provided with the EPA-approved lead hazard information pamphlet entitled "Protect Your Family From Lead in Your Home" (EPA #747-K-99-001). ***NOTE:** This pamphlet is available from the National Lead Information Clearinghouse at (800) 424-LEAD and the vasafety web page.*

g. Unless an EPA-certified inspector has specifically determined that a building component does not contain LBP, construction, renovation, or maintenance in childcare centers or staff housing built before 1978 is to be assumed to involve LBP. This work must be done in accordance with Federal, state, and local regulations.

3. VHA Facility Construction Projects. New construction and renovation projects must utilize, to the degree feasible, the most current VA construction specifications related LBP management.

4. Preventive Maintenance and Repair. Preventive maintenance and repair of known or suspected LBP in occupied space must be effected promptly to avoid the release of LBP chips, dust, etc., to both the interior of quarters and childcare centers and to the soil in the vicinity of the outside of the structure.

5. Periodic Maintenance Inspections. Periodic maintenance inspections are to be conducted on an annual basis for both childcare centers and quarters and, in addition, they are to be conducted each time the occupants of the quarters change. Periodic maintenance inspections consist of visual inspections of known and suspected LBP.

6. Disclosure to Existing and New/Prospective Residents of Quarters and Childcare Center Staff. Disclosure to existing and new or prospective residents of quarters and childcare center Staff and prospective residents of quarters built before 1978 and offered for lease on VHA property must include:

- a. Information on the presence of known LBP and LBP hazards in the housing.
- b. Providing childcare center staff and prospective residents of quarters the opportunity to review available records and reports.
- c. Providing an EPA-approved lead hazard information pamphlet. **NOTE:** *Such pamphlets include the EPA document entitled, "Protect Your Family From Lead in Your Home" (EPA #747-K-99-001), or an equivalent pamphlet that has been approved for use in that State by EPA.*
- d. The completed lead warning statement and acknowledgment language appearing in 24 CFR 35.92 and 40 CFR 745.113, in all lease contracts.

7. Disclosure During Property Transfers. Transfer of VHA-owned quarters built prior to 1978 must conform to HUD and EPA requirements found in 24 CFR Part 35 and 40 CFR Part 745, respectively, for the sale of target housing. Disclosure to potential buyers or parties taking possession of VHA quarters and other buildings defined to be target housing that were built before 1978 must include:

- a. Information on LBP and LBP hazards known to be present in the housing.
- b. The opportunity to review available records and reports.
- c. Providing an EPA-approved lead hazard information pamphlet. **NOTE:** *Such pamphlets include the EPA document entitled, "Protect Your Family From Lead in Your Home" (EPA #747-K-99-001) or an equivalent pamphlet that has been approved for use in that State by EPA.*
- d. The completed lead warning statement and acknowledgment language, appearing in 24 CFR 35.92 and 40 CFR 745.113 in the sales or lease contract.
- e. A 10-day opportunity for purchasers to conduct a LBP assessment at their own expense.

NOTE: *The EPA pamphlet, sample disclosure forms, and a copy of applicable regulations may be obtained from the EPA Internet site or by calling the National Lead Information Clearinghouse at (800) 424-LEAD.*

8. Record Keeping

- a. Records of LBP inspections and risk assessments are to be maintained and updated indefinitely. Records must be stored in such a way to make them easy to retrieve and used by VHA maintenance staff, industrial hygienists, project engineers, and other interested parties.
- b. Records of notifications to occupants need to be kept at least for the length of time required by VHA or VHA facility policy, or 3 years (40 CFR 745.86), whichever is longest.

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9. Medical Screening

a. Blood-lead testing may be indicated where high levels of lead contamination are found in LBP debris, LBP dust, or where LBP is visibly peeling in or around VHA housing that is occupied by children. The VHA facility's occupational health physician needs to be consulted regarding such testing. **NOTE:** *Federal laws and resources, good practices, and testing information are available at <http://www.cdc.gov/nceh/lead/lead.htm>*

b. Blood-lead testing must be conducted in accordance with applicable VHA policy and other applicable Federal requirements regarding the privacy of medical data.

10. Qualifications to Conduct LBP Activities. Under EPA regulations, contractors, contract employees, and Federal employees who conduct certain LBP activities in childcare centers and leased housing must be EPA-certified (40 CFR 745.226, 745.227, and 745.233). These activities include: LBP inspections, risk assessments, project design, and lead abatement supervision and work.